UNITED NATIONS

AT

Administrative Tribunal

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1 August 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 832

Case No. 904: DE'BES
KAYYALI
DIAB

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Samar Sen, Vice-President; Mr. Julio Barboza;

Whereas, on 20 November 1995, Inzihar Abdul Razzaq De'bes, Siham Rafiq Kayyali and Siham Mahmoud Diab, former staff members of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency) filed an application containing pleas which read, in part, as follows:

"...

a. Respondent should reinstate [the Applicants] to suitable vacancies (teaching) as available to him.

b. Applicants should be paid [a] termination indemnity for years of qualifying service prior to their resignation, which did not mature at the time of Applicants' resignation.

c. Payment of secretarial fees estimated at US$ 500."

Whereas the Respondent filed his answer on 5 June 1996;

Whereas the Applicants filed written observations on 22 February 1997;

Whereas the Respondent submitted comments on the Applicants' written observations on 20 April 1997;

Whereas the facts in the case are as follows:

The Applicant De'bes entered the service of the Agency, as an area staff member, on 27 April 1970, on a temporary indefinite appointment, as a Teacher "E", at the grade 5, step 6 level. She resigned from the Agency for health reasons, with effect from 30 September 1990.

On 28 June 1994, the Applicant De'bes wrote to the Director of UNRWA Affairs, Syrian Arab Republic (the Field Director), seeking reinstatement. In a reply dated 4 July 1994, the Field Administration Officer, on behalf of the Field Director, advised her that she did not meet the age conditions specified in the vacancy notice.

On 24 August 1994, the Applicant De'bes lodged an appeal with the Joint Appeals Board (JAB), seeking reinstatement into the service of the Agency.

The Applicant Kayyali entered the service of the Agency, as an area staff member, on 5 October 1963, on a temporary indefinite appointment, as a Teacher "E", at the grade 5, step 1 level. She resigned from the Agency for unstated reasons with effect from 30 November 1985.

On 29 June 1994, the Applicant Kayyali wrote to the Field Director seeking reinstatement. In a reply dated 4 July 1994, the Field Administration Officer, on behalf of the Field Director, advised her that she did not meet the age conditions specified in the vacancy notice.

On 21 August 1994, the Applicant Kayyali lodged an appeal with the JAB, seeking reinstatement into the service of the Agency.

The Applicant Diab entered the service of the Agency, as an area staff member, on 29 October 1963, on a temporary indefinite appointment, as a Teacher, at the grade 5, step 1 level. She resigned from the Agency for health reasons with effect from 31 August 1986.

On 30 June 1994, the Applicant Diab wrote to the Field Director seeking reinstatement. In a reply dated 4 July 1994, the Field Administration Officer, on behalf of the Field Director, advised her that she did not meet the age conditions specified in the vacancy notice.

On 14 August 1994, the Applicant Diab lodged an appeal with the JAB, seeking reinstatement into the service of the Agency.

The JAB adopted its reports on each of the Applicants' appeals on 14 July 1995. In each case, the JAB's evaluation and recommendations read as follows:

"a. By reference to the appeal and to the Appellant's observations dated 28 April 1995, the Board noted the Appellant's contention that she had been applying continually for reinstatement within and after the three years that followed her resignation and that her applications were not received at all by the officials concerned on the grounds that she was over 35 years of age.

b. By reference to the Administration's reply, the Board noted the Administration's contention that 'in addition to being time-barred as a result of non-compliance with the time limits stipulated by area staff rule 111.3, the Appellant is precluded from appealing by laches'; and that (2) 'there has been no non-observance of the Appellant's terms of appointment, including all pertinent regulations and rules'.

c. The Board noted the provisions of paragraph 3.6, Part VI of personnel directive A/4 which was in effect at the time of the Appellant's resignation and at the material time of the appeal, and found that it read as follows:

'Teachers who have resigned from the Agency's service to accept other teaching posts within the Middle East, and who apply for re-employment by reinstatement within three years from the date of their resignation, will be given priority over new candidates who are equally qualified.'

The Board here notes that this rule requires two conditions in order to give priority over equally qualified candidates to teachers who are seeking reinstatement in the Agency's service. Those two conditions are:

(1) that the reason for the teacher's resignation be 'to accept other teaching posts in the Middle East', and

(2) that the request for reinstatement be submitted within three years from the date of the resignation.

By reference to the Appellant's personal file, the Board noted that the Appellant had resigned for health reasons [in the case of the Applicant Kayyali, for personal reasons], as stated in her letter of resignation dated 30 September 1990 [on 30 November 1985, in the case of the Applicant Kayyali, and on 31 August 1986, in the case of the Applicant Diab].

Furthermore, the Board could not find any record or documentation in the Appellant's personal file to prove that the Appellant requested reinstatement in the Agency's service within the three years that followed her resignation nor did the Appellant adduce evidence to that effect [in the case of the Applicant Diab, the report read as follows: 'The only evidence adduced to that effect is a handwritten letter dated 9 September 1986, i.e., nine days after the date of the Appellant's resignation. This letter was submitted by the Appellant as an annex to her letter of observations dated 2 May 1995. The Board is of the opinion that said letter is not acceptable evidence'].

In this context, the Board resolved that the conditions stipulated in paragraph 3.6, Part VI of personnel directive A/4 have not been fulfilled in the case of the Appellant, as (a) she resigned for reasons other than accepting a teaching post in the Middle East,

> and (b) no evidence has been adduced to prove that the Appellant requested reinstatement in the Agency's service within the prescribed time of the said paragraph.
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> IV. RECOMMENDATIONS
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> 14. In view of the foregoing, and without prejudice to any further oral or written submission to any party the Appellant may deem pertinent, the Board unanimously makes its recommendation to uphold the Administration's decision appealed against, and that the case be rejected."

On 14 August 1995, the Commissioner-General transmitted a copy of each JAB report to the Applicant concerned and informed her as follows:

> "You will note that the Board found that you did not satisfy the stipulations of paragraph 3.6, Part VI of personnel directive A/4 and has therefore recommended that the Administration's decision be upheld and your appeal be dismissed.
>
> I have carefully reviewed the Board's report and agree with its conclusions and recommendations. Your appeal is therefore dismissed."

On 20 November 1995, the Applicants filed with the Tribunal the application referred to above.

Whereas the Applicants' principal contentions are:

1. One of the members of the JAB Panel that ruled on the Applicants' case should have been disqualified; therefore, the ruling of the JAB was tainted.

2. The Applicants are entitled to priority for re-employment with the Agency, pursuant to personnel directive A/4, paragraph 3.6.

3. The Applicants are entitled to a termination indemnity in consideration of their many years of service with the Agency.

Whereas the Respondent's principal contentions are:

1. The Applicants have produced no evidence to show that the Chairman of the JAB abused his discretion by failing to disqualify a member of the JAB from considering the Applicants' appeals.

2. The Applicants have not met the requirements of personnel directive A/4 for priority for re-employment since they did not resign to accept other teaching posts in the Middle East.

3. The Applicants' request for payment of a termination indemnity is precluded by both the Area Staff Rules and the legal doctrine of laches.

The Tribunal, having deliberated from 4 July to 1 August 1997, now pronounces the following judgement:

I. The Applicants De'bes, Kayyali and Diab, all former teachers with the Agency, resigned on 30 September 1990, 30 November 1985 and 31 August 1986, respectively, and all applied for reinstatement in June 1994. The cases have similar fact patterns and were presented in one application. Accordingly, the Tribunal considers them together.

II. At the time of each Applicant's resignation, personnel directive A/4, Part VI, paragraph 3.6 governed re-employment of teachers with the Agency. It provided as follows:

> "Teachers who have resigned from the Agency's service to accept other teaching posts within the Middle East, and who apply for re-employment by reinstatement within three years from the date of their resignation, will be given priority over new candidates who are equally qualified."

Thus, there were two conditions for obtaining priority for reinstatement. The first was that teachers who had resigned from the Agency's service must have done so in order to accept another teaching post in the Middle East. The second was that the request for reinstatement must have been made within three years from the date of resignation.

III. With respect to the first condition, the Tribunal notes that, at the time of their resignations, the Applicants De'bes and Diab stated that they were resigning for health reasons. This does not encourage the Tribunal to believe that their real intention was to accept offers of other teaching posts in the Middle East. All the Applicants have provided letters documenting their unsuccessful applications for other teaching posts in the Middle East. The Tribunal finds, however, that these letters do not meet the first condition of personnel directive A/4 set out above. The Applicant Kayyali did not state the reasons for her resignation at the time it was tendered, but has offered no proof that other teaching posts had been offered to her at the time of her resignation. Indeed, the letter she produced to establish her attempts at finding another teaching post suggest that she may not have been employed as a teacher subsequent to her resignation and hence did not resign from the Agency to accept another teaching post.

IV. With respect to the second condition, the Tribunal notes that, in all three cases, more than three years had elapsed between the Applicants' respective dates of resignation and their requests for reinstatement. Further, the Applicants have presented no

evidence to prove their contention that they "repetitively" applied for reinstatement within the required three year period; nor is there any such evidence in the Agency's files. In addition, the Applicants have produced no evidence to support their allegations that their requests for reinstatement with the Agency were not registered because they did not meet the required age limit.

V. As to the Applicant Diab's "withdrawal of resignation" dated 9 September 1986, in which she states that "conditions forced [her] to resign" nine days previously and requests withdrawal of the resignation, the Tribunal notes the absence of an official seal from the former Area Education Officer on the document. In addition, the Applicant adduces no evidence to support her contention that she was forced to resign, and apparently has forgotten the initial alleged cause of her resignation, namely health reasons. The Tribunal will not enter into the question of the letter's authenticity. Once the Applicant resigned - and her resignation was accepted - the relationship between her and the Agency was severed and she could not withdraw the resignation. In any case, the Tribunal finds that this issue is not material since the Applicant did not fulfil the first condition necessary for obtaining priority reinstatement: that of resignation in order to accept another teaching post in the Middle East. The Tribunal fully concurs with the Joint Appeals Board's recommendation to uphold the Commissioner-General's decision.

VI. The Tribunal now considers the Applicants' claim for a termination indemnity in consideration of their years of service with the Agency prior to their resignations. The Tribunal finds that none of the Applicants raised this issue before the JAB and, in accordance with the Tribunal's jurisprudence, the issue is not properly before the Tribunal (Cf. Judgement No. 624, Muhtadi (1993)).

VII. For the foregoing reasons, all the Applicants' pleas are rejected, including the Applicants' request for costs.

(Signatures)

Hubert THIERRY
President

Samar SEN
Vice-President

Julio BARBOZA
Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Executive Secretary